SUBJECT INDEX

PETITION FOR WRIT OF CERTIORARI

Page

Jurisdictional Statement 3

Questions Presented 6

Reasons for Allowance of Writ..... 7

Discussion of Question 1..... 7
Discussion of Question 2..... 13
Discussion of Question 3..... 18
Discussion of Question 4..... 22

Prayer for the Issuance of the Writ..... 26

Certificate of Counsel..... 27

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Jurisdictional Statement 29

Statement of Facts 31

Specification of Errors..... 36

Argument on Error No. I..... 38

Argument on Error No. II..... 44

Argument on Error No. III..... 57

Argument on Error No. IV..... 59

Argument on Error No. V..... 70

Conclusion 72

TABLE OF AUTHORITIES CITED

CASES

Page

Benesch v. Underwood (C.C.A. 6, 1942) 132 F. (2d) 430 ..... 9, 47

Billings v. Truesdell, 321 U.S. 542 (1944) 4, 10, 51

Bronemann v. United States (C.C.A. 8, 1943) 138 F. (2d) 333 ..... 9, 48

Checinski v. United States (C.C.A. 6, 1942) 129 F. (2d) 461 ..... 9, 48

Ex parte Stanziale (C.C.A. 3, 1943) 138 F. (2d) 312 ..... 9, 17, 50, 68

Falbo v. United States, 320 U.S. 549 (1944) .. 4, 10, 51

Graf v. Mallon (C.C.A. 8, 1943) 138 F. (2d) 230 . 9, 48

Harris v. Ross (C.C.A. 5, 1944) 146 F. (2d) 355 .. 51

Hirabayashi v. United States, 320 U.S. 81 (1943) 52

Johnson v. United States (C.C.A. 8, 1942) 126 F. (2d) 242 ..... 9, 49

Kelly v. Johnston (C.C.A. 9, 1942) 128 F. (2d) 793 ..... 24, 71

Lehr v. United States (C.C.A. 5, 1943) 139 F. (2d) 919 51

Macomber v. Hudspeth (C.C.A. 10, 1940) 115 F. (2d) 114, 116 ..... 24, 71

Rase v. United States (C.C.A. 6, 1943) 129 F. (2d) 204 ..... 9, 47

Seele v. United States (C.C.A. 8, 1943) 133 F. (2d) 1015 ..... 9, 48, 49

CASES (*Continued*)

Page

United States ex rel. Beye v. Downer (C.C.A. 2, 1944) 143 F. (2d) 125.....17, 68

United States v. Grieme (C.C.A. 3, 1942) 128 F. (2d) 811 .....16, 67

United States v. Mroz (C.C.A. 7, 1943) 136 F. (2d) 221 .....9, 48

United States ex rel Phillips v. Downer (C.C.A. 2, 1943) 135 F. (2d) 521, 525.....17, 67

United States v. Pitt (C.C.A. 3, 1944) 144 F. (2d) 169 51

United States ex rel Trainin v. Cain (C.C.A. 2, 1944) 144 F. (2d) 944.....8, 49

STATUTES

Page

Judicial Code:

Section 128(a) 5, 30
Section 240(a) 5, 30

28 U.S.C.A., Sec. 225(a) 5, 30
28 U.S.C.A., Sec. 347(a) 5, 30
28 U.S.C.A., Sec. 451, 452 4
28 U.S.C.A., Sec. 463(a) 4, 30
50 U.S.C.A., App., Sec. 305(k) 15, 39, 42

MISCELLANEOUS

Page

Rules of Civil Procedure, 52(a), 81(a), (2), 28 U.S.C.A., following Section 723c 24, 70

Supplement to O'Brien's Manual of Federal Appellate Procedure, Third Edition, at page 30 .. 71

Selective Service Regulations, Section 623.2 .... 13, 59

Congressional Record, Volume 88, pages 8639-8645 61

In the Supreme Court
of the United States

OCTOBER TERM, 1945

No.....

JOHN H. SWATZKA,

Petitioner,

vs.

Colonel MAX W. SULLIVAN, Commanding Officer, Fort Lewis, Washington, and Lieutenant-Colonel DAVID L. FREDENBURG, Commanding Officer, Reception Center, Fort Lewis, Washington,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

John H. Swatzka petitions that a writ of certiorari issue to review a judgment entered against him on May 1, 1945 by the United States Circuit Court of

Appeals for the Ninth Circuit, in a cause pending therein numbered and entitled, "No. 10878, Colonel Max W. Sullivan, Commanding Officer, Fort Lewis, Washington, and Lieutenant-Colonel David L. Fredenburg, Commanding Officer, Reception Center, Fort Lewis, Washington, Appellants, vs. John H. Swatzka, Appellee." The said judgment reversed an order of the United States District Court for the Western District of Washington, Southern Division, discharging John Gale Swatzka, the petitioner's son, from further detention and restraint by reason of his wrongful induction into the Army of the United States, and further remanding the said John Gale Swatzka to the Linn County, Oregon Local Board No. 1 for reconsideration of his classification and claim of agricultural deferment based upon the Selective Service file and such other evidence as said local board may see fit to consider. The petitioner's petition for rehearing was filed and was denied by the United States Circuit Court of Appeals for the Ninth Circuit on June 12, 1945.